

MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Thursday, March 18, 2010 – 9 a.m. – Room 119
Charlotte County Administration Center
18500 Murdock Circle
Port Charlotte, FL 33948-1094

(These minutes are not official until they have been approved by the Charlotte County Board of Zoning Appeals)

Members Present

Tom Thornberry, *Chairman*
Edmund T. Hittson, *Vice-Chairman*
Bob Stout, *Secretary*
Bill Truex
Audrey Seay (absent and excused due to illness)

Staff Present

Derek Rooney, *Assistant County Attorney*
Nicole C. E. Dozier, *Zoning Official*
Ken Quillen, *AICP, Planner III*
Diane Clim, *Recorder*

I. Call to Order

Chairman Thornberry called the March 18, 2010 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. Pledge of Allegiance

Chairman Thornberry led the members and the audience in reciting the Pledge of Allegiance.

III. Roll Call

Roll call was taken; a quorum was present. **Mr. Thornberry** said Mrs. Seay is absent.

IV. Swearing In of Those Giving Testimony

Diane Clim swore in all persons who wished to provide testimony.

V. Approval of Minutes

Mr. Stout said regarding the January 13, 2010 minutes, on page 5 he also referred to our existing zoning code is pyramidal. The first permitted use under IL zoning is "all uses permitted in CI". At page 1877, under Sec. 3-9-43 CI, the 9th item under permitted uses reads "Drive-in theaters, golf driving ranges, par-3 golf courses and outdoor commercial recreational facilities." I believe the owner's intended use is covered under "outdoor commercial recreational facilities." It is a matter of right, he does not need our approval.

ACTION: *A motion was presented by Ed Hittson and seconded by Bill Truex to approve the minutes of the January 13, 2010 meeting of the Board of Zoning Appeals, with the noted corrections, with a unanimous vote.*

Motion made for the February 10, 2010 minutes

ACTION: *A motion was presented by Bill Truex and seconded by Ed Hittson to approve the minutes of the February 10, 2010 meeting of the Board of Zoning Appeals, as written, with a unanimous vote.*

Mr. Thornberry said now would be the time to discuss the reconsideration of Mr. Berntsson's case. It is not on the agenda, it is on the April BZA agenda, but we would like to discuss the email Mr. Berntsson sent us.

Mr. Truex said the concern is raised as to how the meeting ended, is that correct?

Mr. Stout said it indicated I left, but I didn't.

Mr. Rooney said to clarify, Mr. Berntsson's letter seemed to implicate the idea that it was improper to transfer the gavel to Mrs. Seay. The confusion arose from the belief at the meeting, the election that just occurred appointing Mr. Hittson as Vice-Chair, went into effect at the next meeting. I checked into the Robert's Rules of Order as revised, and the procedure is it happens immediately. Does that give any real effect to running the meeting, I don't think it void the reconsideration, but for future reference, after there is an election, it should go into place immediately.

Mr. Berntsson said there is a series of unfortunately events that day. Unfortunately through no fault of anyone, their recording equipment was not working at that meeting. We could not go back and listen to what happened after you all left. There was some confusion with the Chair leaving the meeting and no formal announcement of the Chair leaving and the gavel being passed. I was under the impression and heard from people in the room that Mr. Stout was getting up and leaving his chair as well, that there was an understanding that the meeting had in fact adjourned. Anything that would have taken place after that adjournment would be outside of an advertised sunshine meeting. That was my concern, not being able to go back and listen to the tape, I could not confirm that, so I raised that issue. Because of all the confusion, because of the election and the Vice-Chair not being the one taking the gavel, it just appeared we were no longer in an organized meeting, but kind of in a free for all and that is why I raised the question.

Mr. Stout said he recently had knee surgery and occasionally gets up to stretch.

Mr. Berntsson said he raised that question because he cannot talk to you all to find out what you thought had happened, and that is why I raised it in the format that I did. Thank you.

Mr. Thornberry said I did handle the end of that meeting badly as Chair. I was under a little stress myself, I was ill. I probably should not have even been at the meeting, but I was here. I was comfortable as I was leaving this meeting that a vote was taken and it was done properly by Mr. Truex. I knew in my mind as I was walking out of the building, that we would be in a reconsideration of that decision. I apologize for that.

VI. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the March 18, 2010 Board of Zoning Appeals meeting were submitted.

VII. Introduction of Staff/Comments

Chairman Thornberry introduced staff. *Nicole Dozier, Zoning Official, Attorney Derek Rooney, and Chair Thornberry* made introductory remarks regarding the types of requests that the Board of Zoning Appeals would be reviewing and the standards which must be met, the notification process and how the Board of Zoning Appeals makes its decision.

VIII. New Business

The following petitions were advertised on March 3, 2010: SE-10-05; SE-10-07; and SE-10-04(M1) (modification)

Petition #SE-10-05

Kristine Hinterberg is requesting a special exception to allow a home occupation, consisting of a realtor's office, in a Mobile Home Conventional (MHC) zoning district. The property address is 4289 Hollis Avenue, Port Charlotte, Florida and is described as Lots 401 and 402, El Jobean Subdivision Ward 1, in Section 28, Township 40 South, Range 21 East. The property contains +/- 7,900 square feet. A complete legal description and additional information are on file.

Ken Quillen presented general information and staff findings for the petition.

Applicant Presentation

Kristine Hinterberg said she has been sworn. She gave her address and thanked the staff for a thorough job. She said she does not have anything to add, but will answer any questions.

Mr. Thornberry asked her if she agreed with the stipulations?

Ms. Hinterberg replied yes.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

No one spoke for or against this request.

There being no further requests to speak for or against the petition, Mr. Truex moved to close the public hearing, seconded by Mr. Stout. The public hearing was closed with a unanimous vote.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Board Member Comments and Questions

None

ACTION: *A motion was presented by Bob Stout and seconded by Ed Hittson that Petition SE-10-05 be APPROVED based on the Growth Management Staff Report dated March 8, 2010 the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the special exception with 3 conditions.*

Motion was approved with a unanimous vote with the following conditions:

1. This special exception shall allow a home occupation, consisting of a realtor's office, as an accessory use to the existing single-family residence.
2. This special exception, allowing a home occupation, shall be conducted according to all of the standards and conditions of Section 3-9-79 of the Zoning Ordinance.
3. Any major modification or change in the type of home occupation conducted shall require a modification to the special exception. Minor changes or additions such as accessory uses or structures may be approved by the Zoning Official.

Petition #SE-10-07

Robert Berntsson, agent for City of Punta Gorda, is requesting a special exception to bring an existing potable water treatment facility into conformity with code and allow its expansion in an Agriculture Estate (AE) and Excavation and Mining (EM) zoning districts. The property address is 38100 Washington Loop Road, Punta Gorda, Florida and is described as Parcels P2, P2-3, P3-1, P3-1-1 and P10-10, in Section 29, Township 40 South, Range 24 East. The property contains +/- 190 acres. A complete legal description and additional information are on file.

Ken Quillen presented general information and staff findings for the petition.

Applicant Presentation

Robert Berntsson, Esq. BIG W Law Firm, agent for the City of Punta Gorda, gave his credentials and said the City is requesting a special exception to bring the existing water treatment plant into conformity with the Code and to allow the expansion of that plant. As part of the special exception approval, we are also requesting approval of a specific landscape plan, which we now have staff support of as well. The City of Punta Gorda has been providing central water service to the City and County residents from the existing water treatment plant on Washington Loop since the early 1960's. Coincidentally, our Zoning Code first came into effect in the early 1960's, so there was never, to anyone's knowledge, a special exception or other approval for the existing water treatment plant, but when that was built on Washington Loop Road in the 1960's, probably most people did not even know there was a Washington Loop Road. It has been operating since that time, without any violations of the Zoning Code. By coming forward with this special exception for the expansion, we are also including the original plant to finally make it legal after all these years. It has not been illegal, it has just been a legal non-conforming use. The City purchased the land adjacent to the current plant to allow the expansion of the plant, and also to allow a reservoir to serve its future needs. In order to dig a reservoir, the property needs to be zoned Excavation and Mining (EM) in order to get an excavation permit. They went forward and rezoned the property. The excavation and mining category, is an additional category that was done in response to concerns the County had about excavations in the County. They amended the code by adding that but they did not go over and

specifically amend the essential service section of the code where virtually every zoning district is listed as either by right or by special exception to have essential services. This one really comes under by reasonable implication because EM does not specifically allow essential services, but they are allowed in virtually every zoning category. We join in with the staff that we do meet the criteria for the special exception. We are allowed in this zoning district and a portion of the property is zone AE. The requested special exception is compatible with the existing uses. They have been operating a water treatment facility on this site for some 30-40 years. Adequate access will be provided, any concerns regarding traffic will be adequately addressed. With regard to buffers, landscape, trees, and open space you were advised by Mr. Quillen that there are some concerns in just landscaping this like you would landscape any other facility. The holding ponds and things of that nature, the effluent that has to be treated, that cannot have vegetation in it and things of that nature. In addition, Charlotte County in their Public Works projects, have been allowing reduced landscaped projects for CCU, the jail, and other Public Works types projects. Therefore, we have met with staff and we originally offered a much lower landscape plans, but after our meeting with staff we came back with an enhanced landscape plan that staff is accepting. We request you approve that in accordance with the revised condition #2. The staff sites goals 10 and 11, just to be clear, that is of the infrastructure element of the Charlotte County comprehensive plan – that encourages potable water supply. We join in with the revised conditions that are proposed and respectfully request you approve the special exception.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

No one spoke for or against this request.

There being no further requests to speak for or against the petition, Mr. Truex moved to close the public hearing, seconded by Mr. Stout. The public hearing was closed with a unanimous vote.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Board Member Comments and Questions

None

ACTION: *A motion was presented by Bill Truex and seconded by Ed Hittson that Petition SE-10-07 be APPROVED based on the Growth Management Staff Report dated March 8, 2010, the evidence and testimony presented at the hearing, and finding that the applicant HAS MET the required criteria for the granting of the special exception with 5 conditions.*

Motion was approved with a unanimous vote with the following conditions:

1. This special exception is to bring the existing water treatment plant into conformity with code, to allow expansion of this plant as currently proposed, and allow future expansions to the structures and facilities as indicated on the Site Plans submitted with this application.
2. All The landscaping required by Charlotte County codes for the parking lot shall be complied with. ~~except that the~~ The Tree Points calculated for the south one-half of the

development site, near and around the *Concentrate Holding Pond*, shall not be required. The trees required for the remainder of the 10-acre expansion project shall be according to the Landscape Plan dated "Received March 12, 2010, and labeled Exhibit H.

3. The proposed new access drive onto Washington Loop Road, located along the east side of the expansion, must be approved through the Site Plan Review process.
4. The site plan presented by the applicant as part of the petition is for illustrative purposes only. All permitting procedures and codes are applicable to the construction and operation of this water treatment plant. Revised detailed site plans must be approved through the Site Plan Review process prior to issuance of any permits.
5. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions such as accessory uses or structures may be approved by the Zoning Official.

Petition #SE-10-04(M1) Modification

Creighton Commercial Development, LLC, agent for Walgreen Company, is requesting a modification of a special exception to allow a pole sign to replace the required monument type sign in a Commercial General (CG) zoning district. The property address is 3001 Tamiami Trail, Port Charlotte, Florida and is described as Lots 5, 6, 7, 26, 27, 28, 29 and 30 of Block 56 of Port Charlotte Subdivision, Sub-section 05, located in Section 21, Township 40 South, Range 22 East. The property contains +/- 2.14 acres. A complete legal description and additional information are on file.

Ken Quillen presented general information and staff findings for the petition.

Applicant Presentation

Brent Evans, Creighton Commercial Development, LLC, agent for Walgreen's, said he has some additional papers to pass around to the Board. He handed out copies of permits and receipts from forms that were for the construction of the sign. That sign was being manufactured while he was here in February requesting a special exception for other issues at Walgreen's. Everything has already been approved and constructed for the sign. Icon is the name of the company who got the permits and constructed the sign. We held off the erection because of the February hearing.

Mr. Thornberry asked staff to reply.

Ms. Dozier said the sign is approvable. At the time we were doing the research, the sign was not on site. When we were reviewing the application, the intention was to get something better, so we recommended the monument sign. Staff was not aware there was a permit issued. She is not sure if Mr. Quillen knew that when he was looking at the application originally.

Mr. Rooney said he believes the Board needs a shortened explanation of what happened. At the last hearing, you approved a special exception to allow a larger wall sign on the

condition that they would put a monument sign instead of a free standing sign. Unfortunately, they already had a pole sign built. They will incur the cost.

Mr. Evans said we submitted for the special exception on December 28, 2009. This was approved December 30 and the notice of commencement was filed January 5, 2010.

Mr. Thornberry asked was it specific that you were doing a pole sign?

Mr. Evans said yes, it is all in the exhibits I just handed out.

Mr. Thornberry asked and it was approved by our County?

Mr. Evans replied yes.

Mr. Quillen said our recommendation is still the monument sign. When they applied for the permit for the sign, we were obliged to approve it because it met Code, however, they were still applying for a special exception for signage and they were taking a risk that a special exception can be conditioned.

Mr. Rooney said essentially what happens now is if they do not put in a monument sign and they go forward and put the pole sign in, the special exception to get a larger than otherwise permissible wall sign is, they cannot go forward with it. They would have to build a wall sign that meets the current Code. They could not go above the allowed square footage.

Ms. Dozier said letting them exceed the sign was a privilege as they were putting in the monument sign. Now that they are not going to do that, if they build a regular sign, then everything that was approved in the special exception is no longer standing because they are not compliant with the special exception that was originally approved before.

Mr. Truex said this is a sign that we see at the Walgreen's pretty much every where now. It's an electronic sign.

Mr. Evans said my question was what we are looking for is to go ahead, put the signs up on the building like we had it. We are just looking for an amendment to that special exception from the monument back to the pole. Leaving the other signage as it was and just from the monument to the pole. This building sits so far back from U.S. 41, it has the access road and 3 buffers before you even get to the building, that is why we went for the special exception from the beginning. This store is ready to be opened next week.

Mr. Thornberry asked if the pole sign can go back to the original size?

Mr. Quillen said the pole sign was not larger than Code allows.

Mr. Hittson asked can the wall sign be reduced?

Mr. Rooney said that is the issue. If you do not approve the modification, they'll just be allowed – the wall sign has been built. The wall sign was built according to Code, however many square feet is permissible.

Mr. Evans said but that is not what we are asking for. Today we are asking for is to leave the building alone and just change the monument back to the pole. Actually all the signs are built.

Ms. Dozier said that when he states leave the building alone, he means leave it alone with the increased size and signage that is on the building that is approved originally and keep that the same, however, the only difference is instead of providing the monument sign as approved in the last meeting, he would just be providing the standard pole sign that is allowed by Code.

Mr. Truex said which in my opinion is more easily seen from U.S. 41 and causes fewer accidents.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

No one spoke for or against this request.

There being no further requests to speak for or against the petition, Mr. Stout moved to close the public hearing, seconded by Mr. Truex. The public hearing was closed with a unanimous vote.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Board Member Comments and Questions

Mr. Thornberry asked Mr. Evans if they are in agreement with the conditions?

Mr. Evans said no. What he is asking for is to leave the building signs as they were approved before and to put in the pylon sign. We are just about ready to open, Walgreen's is going to be on site this afternoon, and it is hard enough getting business right now, and with this little bit of a mix-up, this is something that was missed by staff.

Ms. Dozier said for correction, the staff report does say exactly what this gentleman is asking for. What it states is that the signs that were approved as enlarged would still remain as is and that he would be able to keep the pole sign instead of the monument sign and that is what these basic items state.

Mr. Evans said thank you Nicole, I appreciate that very much.

Mr. Quillen said he would also like to make a correction to one of his statements. Staff was aware that a permit was issued for the free standing sign. We made our recommendation the way we did regardless. We did not know the sign was manufactured. We knew it had been permitted.

Mr. Hittson asked how much of a problem would it be to reduce the wall signs?

Mr. Evans said the signs have already been fabricated. They are looking to take over by April 1. To go back and change all that, is inhibiting their opening as well.

ACTION: *A motion was presented by Bill Truex and seconded by Ed Hittson that Petition SE-10-04(M1) modification be APPROVED based on the Growth Management Staff Report dated March 8, 2010 the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the special exception modification with 5 conditions.*

Motion was approved with a unanimous vote with the following conditions:

1. This special exception is to allow the wall signs identified in the staff report as Signs A, Signs B, Signs C and Sign D at the locations and the sizes specified in the drawings.
2. The directional signs which read "ENTRANCE" and "EXIT", located on the drive-through canopy, shall be permitted but shall be limited to letters not exceeding 10" in height.
3. ~~Only one primary class "A" free standing sign shall be permitted on this parcel. The primary class "A" free standing pole sign, identified as Sign F in the staff report, shall be redesigned and constructed as a monument type sign not exceeding 20' in height and 10' in width.~~ A changeable electronic reader board may be permitted but shall not exceed 32 square feet in area and shall comply with all other requirements of the sign code.
4. The site plan presented by the applicant as part of the petition is for illustrative purposes only. The proposed signs must comply with all other applicable codes, including the requirements for Sign Permits and Commercial Design Standards if applicable.
5. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions such as accessory uses or structures may be approved by the Zoning Official.

IX. Public Comments - None

X. Staff Comments

Ken Quillen said tomorrow is the tour of the Solar Plant in DeSoto County. Mr. Stout will be going along with staff. The next meeting is Wednesday, April 14, 2010 and we have about 6 or 7 items. A few continuances.

XI. Member Comments –

Mr. Hittson said when he did his site inspection on that property for the lady who wanted a real estate office from her house, I looked across the canal at Nettel Court. Mr. Rooney maybe you can answer this question. I think it was about 2 or 2.5 years ago that we originally told the gentlemen who built out into the canal, I noticed nothing has changed. What is the status of that anyway? There was a mobile home without a permit, constructed a huge addition and moved it within about 2 feet of the seawall.

Mr. Rooney said Mr. Redden. The County reached a settlement last week on that. The settlement calls that he is going to get a building permit for the addition. He is going to remove the shed by the seawall. He will drop a current case he has against the County. The County will drop its counter-claim. It went on for years and years. We had to make a choice to make him tear down the house or to work out a deal that was mutually acceptable. As long as he can get permits for it, which is debatable, he will be allowed to keep it.

XII. Next Meeting

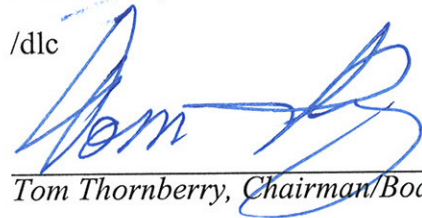
*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, April 14, 2010, at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 10:10 a.m.

Respectfully submitted,

Diane Clim, Recorder

/dlc

A handwritten signature in blue ink, appearing to read "Tom Thornberry", is written over a horizontal line.

Tom Thornberry, Chairman/Board of Zoning Appeals

Approval Date: 4-14-10